

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2000-527-C - ORDER NO. 2006-524  
SEPTEMBER 20, 2006

IN RE: Petition by AT&T Communications of the	)	ORDER VACATING
Southern States, Inc. for Arbitration of	)	PORTIONS OF ORDER
Certain Terms and Conditions of a Proposed	)	NO. 2001-079 AND
Agreement with BellSouth	)	ORDER NO. 2001-147
Telecommunications, Inc. Pursuant to 47	)	
U.S.C. § 252.	)	

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Motion of BellSouth Telecommunications, Inc. (BellSouth), filed August 7, 2006, requesting this Commission to enter an order vacating the portions of Order No. 2001-079 and Order No. 2001-147 that address Issue No. 6 in the present arbitration proceeding. In the alternative, BellSouth requests that the Commission reverse those portions of the orders addressing Issue No. 6.

This docket was established upon the filing by AT&T Communications of the Southern States, Inc. (AT&T) of a Petition for Arbitration of a proposed agreement with BellSouth. The Commission held a hearing on this matter and entered rulings regarding the issues raised in the arbitration. Among those rulings was the adoption of AT&T's position on Issue No. 6 in the arbitration.<sup>1</sup> BellSouth appealed the Commission's decision regarding Issue No. 6 to the United States District Court for the District of South Carolina

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<sup>1</sup> See Order on Arbitration, Order No. 2001-079, at 12-17 (January 30, 2001); Order Ruling on Petitions for Rehearing and Reconsideration, Order No. 2001-147, at 31-35 (February 15, 2001).

(the Court). The Court deferred ruling on BellSouth's appeal pending a decision by the Federal Communications Commission (FCC) "that promised to bear directly"<sup>2</sup> on the merits of Issue No. 6. The FCC issued its decision, the *Triennial Review Order*, on August 21, 2003, and subsequently, the Court ordered the parties to submit briefs regarding whether the *Triennial Review Order* controlled the outcome of the appeal case before the Court. The Court rendered its decision and remanded the case to the Commission in light of issuance of the *Triennial Review Order*.

In response to an inquiry by the Hearing Officer subsequently appointed in the docket, counsel for AT&T, by letter dated June 23, 2006, informed the Commission of a new interconnection agreement between AT&T and BellSouth, effective March 14, 2006. AT&T's June 23 letter advised that such agreement directly addressed the matter at issue in this proceeding. Thus, as a result of the new interconnection agreement, AT&T asserted its view that the matter at issue is moot and stated its intention to withdraw from further participation in the docket.

BellSouth, on August 7, 2006, filed its Motion seeking to have the Commission's decisions vacated in Order Nos. 2001-079 and 2001-147 in regard to Issue No. 6. BellSouth in its Motion agrees that in light of the subsequent interconnection agreement, the Commission's original ruling on Issue No. 6 does not currently have any practical effect on how AT&T and BellSouth interconnect with each other. However, BellSouth expresses its concern that the Commission's ruling on Issue No. 6 could be argued to be binding precedent that allows parties that have entered into tariffed term commitments

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<sup>2</sup> Order of Remand, United States District Court for the District of South Carolina, Columbia Division, C/A No. 3:02-0955-17 (December 23, 2003).

with BellSouth to ignore those commitments; therefore, BellSouth does not agree with AT&T that the issue in this proceeding is moot. BellSouth states that it cannot agree to close out this docket without somehow addressing the Commission's rulings on Issue No. 6.

BellSouth requests the Commission vacate or reverse the portions of Order No. 2001-079 and Order No. 2001-147 that address Issue No. 6. In doing so, BellSouth asserts that no party's rights would be prejudiced to this or any future proceeding before the Commission since the parties to this proceeding agree that the decision no longer has any practical effect on how BellSouth and AT&T interconnect with each other and parties to any future proceedings in which the issue may arise will be free to argue from a "clean slate" as far as Commission precedent is concerned. Additionally, by vacating the referenced portions of the orders, BellSouth states that all interested parties will more likely fully and effectively participate in the Commission's consideration and resolution of the issue should it arise again. Being that AT&T has withdrawn its participation in this docket, BellSouth adds that if the Commission decides the merits of the issue at this time, it appears that it would do so without the active participation of one of the primary parties to the dispute.


The Commission has considered this matter and finds that in light of the current non-participation of and the absence of any contrary argument from AT&T, BellSouth's Motion to Vacate should be granted. We hereby agree with BellSouth that vacating the portions of Order No. 2001-079 and Order No. 2001-174 addressing Issue No. 6 would not prejudice the rights of the parties to this or any future proceedings before the

Commission and that parties to future proceedings in which the issue may arise will be free to argue from a “clean slate” as far as Commission precedent is concerned. Additionally, if the issue arises again, the Commission agrees that vacating our decision on Issue No. 6 at this time makes it more likely that all interested parties would fully and effectively participate in the Commission’s consideration and resolution of the issue.

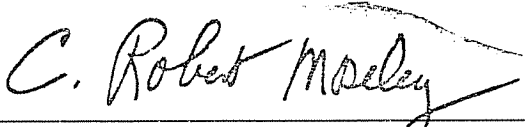
IT IS THEREFORE ORDERED THAT:

1. The portions of Order No. 2001-079 and Order No. 2001-147 that address Issue No. 6 in the present proceeding are hereby vacated.
2. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
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G. O'Neal Hamilton, Chairman

ATTEST:

  
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C. Robert Moseley, Vice Chairman

(SEAL)